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June 11

Parker L. Hancock, Warden,
New Hampshire State Prison
Concord, New Hampshire

Dear Warden Hancock:

You have inquired regarding the authority of the Trustees of the State Prison to authorize the use of prison labor for an extended period of time at Franconia Notch to work on projects for the Department of Forestry and Recreation, requiring absence of such prisoners from the State Prison during the summer months.

It is my opinion that the Trustees are not empowered to authorize the employment of prisoners under the conditions stated. The provisions of R.L., c. 464, s. 6, par. VI, authorizing the Trustees "to provide such other employment for the prisoners as they may deem desirable" and "to organize, conduct and manage such industries as in their judgment may be best adapted to the needs of the prison and the prisoners . . .", are limited by the effect of extended absence from the State Prison upon the sentence imposed by judicial process.

R.L., c. 429, s. 9 provides "whenever an offense is punished by imprisonment for more than one year, the sentence shall be, that the offender be imprisoned in the state prison". Our Supreme Court has established the proposition that "The sentence of the law is to be satisfied only by the actual suffering of the imprisonment imposed, unless remitted by death or by some legal authority. . . .". Petition of Moebius, 73 N.H. 350, 352. A prolonged absence from the State Prison would violate this doctrine, since a prisoner, while working at Franconia Notch during the summer months, albeit under strict surveillance, would not satisfy the sentence of the law "by the actual suffering of the imprisonment imposed".

Moreover, R.L., c. 429, ss. 41-46, authorize the employment of state prisoners by the highway commissioner "in the construction, improvement and maintenance of state highways and in preparing road materials". S. 41, 1b. This expression by the legislature

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of specific employment outside of prison walls for an extended period of time (see s. 45, 1b.) would seem to exclude employment of prisoners on other state projects requiring absence from the State Prison overnight.

While the Governor and Council as "the ultimate authority over . . . the state prison" (R.L. c. 14, s. 1, as inserted by Laws of 1950, c. 5, Part 11, s. 5) upon recommendation of the Board of Trustees of the State Prison, seemingly may be empowered to authorize the utilization of prison labor for an extended period of time at Franconia Notch, it is believed that the conservative course of action is to enact an enabling statute as an amendment to R.L., c. 429.

Very truly yours,

Gordon M. Tiffany
Attorney General

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